STATE OF MICHIGAN
IN THE SUPREME COURT

AMERICAN FEDERATION OF STATE, COUNTY, AND MUNICIPAL EMPLOYEES ("AFSCME") MICHIGAN COUNCIL 25 AND ITS AFFILIATED AFSCME LOCALS 23 AND 2394,
Plaintiffs/Appellants

And

DETROIT CITY COUNCIL, et al.,
Intervening Plaintiffs/Appellants

v.

CITY OF DETROIT AND THE DETROIT HOUSING COMMISSION,
Defendants/Appellees

Supreme Court No. 122053
Court of Appeals No. 241606
Wayne County Circuit Court
Case No. 01-132280-CZ

Renate Klass (P29664)
Martens, Ice, Geary, Glass, Legghio, Israel & Gorchow, P.C.
1400 North Park Plaza Bldg.
17117 W. Nine Mile Rd.
Southfield, MI 48075
(248) 559-2100
Appearing on behalf of Plaintiff/Appellant AFSCME

Robert W. Palmer (P31704)
Urso, Palmer & Ross, P.C.
535 Buhl Bldg., Suite 1550
Detroit, MI 48226
(313) 961-8400
Appearing on behalf of Plaintiff/Appellant City Council

Leonard D. Givens (P14028)
John H. Willems (P31861)
Donald W. Myers (P58348)
Miller, Canfield, Paddock and Stone, P.L.C.
150 West Jefferson Ave., Suite #2500
Detroit, MI 48226
(313) 963-6420
Appearing on behalf of Defendants/Appellees

F. Philip Colista (P12054)
535 Buhl Bldg., Suite 1550
Detroit, MI 48226
(313) 961-8400
Co-Counsel for Plaintiffs/Appellants City Council

DEFENDANTS/APPELLEES' BRIEF ON APPEAL OF PLAINTIFFS/APPELLANTS AFSCME

ORAL ARGUMENT REQUESTED

TABLE OF CONTENTS

TABLE OF AUTHORITIES iv

COUNTER STATEMENT OF QUESTIONS FOR REVIEW 1

OF THE SUPREME COURT 3

SUMMARY OF ARGUMENT 4

COUNTER STATEMENT OF PROCEEDINGS BELOW 8

1. The Complaints and Initial Temporary Restraining Order 8

2. Hearings and Ruling in the Trial Court 9

a. Interim Injunction 9

b. Summary Disposition and Permanent Injunction 10

3. The Appeal To The Court Of Appeals 13

COUNTER STATEMENT OF FACTS 16

1. The DHC Was Created In 1933 16

2. City And HUD Work Together To Improve The DHC 16

3. HUD Wants Separation of the DHC From the City 18

4. State Law Establishes Housing Commissions As Separate Public Bodies Corporate 19

5. Mayor Attempts To Comply With State Law And Implement HUD Intent 19

6. City Council Blocks Separation 20

ARGUMENT 22

INTRODUCTION 22

1. Michigan's Housing Act Apportions Certain Rights And Powers To The Detroit Housing Commission And Retains Other Rights And Powers To The City. 22

2. City Council Admits The DHC Is A Public Body Corporate By Operation Of Law 22

3. City Council's Actions To Block DHC Separation Violate The Housing Act 23

4. The Grand Rapids Case Holds That a City Council May Not Withhold Or Usurp Powers Granted To A Housing Commission by State Law 23

5. Even With A Separated DHC, AFSCME–Represented Employees Will Continue To Be Represented By AFSCME And Protected By A Collective Bargaining Agreement 24

6. City Council's Actions Contravene The Expressed Will Of The Legislature, The Intent Of HUD, And Are Contrary To The Public Interest 24

I. THE COURT OF APPEALS DECISION DOES NOT CONFLICT WITH THE GRAND RAPIDS CASE AND CORRECTLY INTERPRETS THE HOUSING ACT TO THE EFFECT THAT THE DETROIT HOUSING COMMISSION IS AN INDEPENDENT EMPLOYER UNDER THE ACT 25

A. The Court of Appeals Opinion is not In Contravention Of MCR 7.215 25

B. The Grand Rapids Case Holds That Housing Commissions Are Independent Bodies Corporate And Are The Sole Employer Of Their Employees 26

II. THE COURT OF APPEALS CORRECTLY REVERSED THE TRIAL COURT IN FINDING THAT THE HOUSING ACT CONFERS THE POWER TO BE AN EMPLOYER ON HOUSING COMMISSIONS 29

A. As A Quasi-Corporation, The DHC Derives Its Power To Employ From Express Provisions Of The Housing Act, Regardless Of Whether That Power Is Set Forth In The Enumerated Powers Section Of The Act 30

B. The Enumerated Powers Provision Of The Housing Act Itself Grants The DHC Powers Beyond Those Listed And Necessary To Fulfill Its Functions 31

C. The Power To Employ Is Expressly Set Forth In The Legislative Enactment 33

III. THE COURT OF APPEALS CORRECTLY HELD THAT THE CITY COUNCIL MAY NOT REQUIRE THE MAYOR TO MAKE THE STATUTORY RECOMMENDATION REGARDING THE SALARY AND CLASSIFICATION OF DHC EMPLOYEES 34

IV. THE COURT OF APPEALS CORRECTLY HELD THAT CITY COUNCIL MAY NOT REQUIRE THAT DHC EMPLOYEES REMAIN IN THE CIVIL SERVICE 36

V. PRIOR BUDGET ACTIONS DO NOT OPERATE TO ESTOP THE EXECUTIVE BRANCH FROM GIVING EFFECT TO THE HOUSING ACT 37

VI. THE EFFECT OF REVERSION TO THE PRIOR HOUSING ORDINANCE IF THIS COURT UPHOLDS THE COURT OF APPEALS IS IRRELEVANT THE ISSUES PRESENTED BELOW AND ON APPEAL 41

VII. THE ORDINANCE REQUIRING THE MAYOR TO MAKE A SALARY RECOMMENDATION VIOLATES THE ALLOCATION OF AUTHORITY BETWEEN THE EXECUTIVE AND LEGISLATIVE BRANCHES IN THE CITY CHARTER 42

VIII. THE CITY'S HOME RULE POWERS DO NOT ALLOW IT TO ADOPT ORDINANCES THAT CONTRAVENE THE HOUSING FACILITIES ACT 43

A. The Ordinances At Issue Encroach On An Area Regulated By State Law 44

B. Preemption May be Implied from the Pervasiveness of the Act 46

IX. THE COURT OF APPEALS HAD JURISDICTION OVER COUNT I OF AFSCME's AMENDED COMPLAINT. IN ANY CASE, AFSCME's CLAIM UNDER COUNT I OF ITS COMPLAINT IS NOW MOOT 47

A. The Court Of Appeals Properly Took Jurisdiction 47

B. AFSCME's Claim Under Count I Of Its Complaint Is Moot 51

CONCLUSION AND RELIEF REQUESTED 52

TABLE OF AUTHORITIES

FEDERAL CASES

Michigan v United States, 40 F3d 817 (6th Cir 1994) 29

STATE CASES

In re Midland Publishing, 420 Mich 148 51
Gildemeister v Lindsay, 212 Mich 299 51
Michigan Nat'l Bank v St Paul Fire & Marine Ins Co, 223 Mich App 19 51
Amway v Grand Rapids R Co, 211 Mich 592 51
Advisory Opinion re Constitutionality of PA 1966, No. 346, 380 Mich 554 (1968) . 29, 30
Attorney General ex rel. Lennane v City of Detroit, 225 Mich 631 (1923) 44
Big Prairie Twp. v Bit Prairie Twp Grange No 935, 286 Mich 268 (1938) 30
In Re Brewster Street Housing Site in City of Detroit, 291 Mich 313 (1939) 16
Brimmer v Village of Elk Rapids, 365 Mich 6 44
City of Detroit v Public Utilities Com'n, 288 Mich 267 (1939) 30
City of Detroit v Walker, 445 Mich 682 (1994) 44
City of Jackson v Thompson-McCully Co, LLC, 239 Mich App 482 51
Cornerstone Investments, Inc. v Cannon Tp.I, 231 Mich App 1, reversed 30
Cross v Whedon, 93 Mich App 13 (1979) 40
Department of Treasury v Psychological Resources, Inc, 147 Mich App 140 (1985) 28
Detroit City Council v Stecher, 430 Mich 74 (1988) 43
Detroit Fire Fighters Ass'n v City of Detroit, 449 Mich 629 (1995) 43
Dodak v State Administrative Bd, 441 Mich 547 (1993) .....
Fass v City of Highland Park, 326 Mich 19 (1949) 40
Federated Publications, Inc v City of Lansing, 467 Mich. 98 51
General, 146 Mich App 82 (1985) 30, 32, 33, 34
Grand Haven v Grocer's Cooperative Dairy Co., 330 Mich 694 (1951) 44
Grand Rapids Employees Ind Union v City of Grand Rapids, 235 Mich App 398 ..... 7, 10, 13, 19, 23, 24, 25, 26, 27, 28, 34, 36, 46
Gubin v Lodisev, 197 Mich App 84 (1992) 41
Guzowski v Detroit Racing Ass'n, Inc, 130 Mich App 322 (1983) 50
Head v Phillips Camper Sales & Rental, Inc, 234 Mich App 94 (1999) 41, 50
Home Owners' Loan Corp. v City of Detroit, 292 Mich. 511 (1940) 31, 33
Huron-Clinton, 146 Mich. App at 81 32
Huron- Clinton Metropolitan Authority v Boards of Supervisors, 300 Mich 1 ..... 29, 32
LaBello v Victory Pattern Shop, Inc, 351 Mich 598 51
Marquis v Hartford Accident & Indemnity (After Remand), 444 Mich 638 28
Messenger v Ingham Co Prosecutor, 232 Mich App 633 38

Michigan Council 25, AFSCME v St. Clair Co., 136 Mich. App 721 (1984), rev'd in part on other grounds 28
Midland Township v State Boundary Commission, 401 Mich 641 (1977) 44
Morosini v Citizens Ins Co of America, 224 Mich App 70 38

Noey v City of Saginaw, 271 Mich 595 (1935) 44
People ex rel Stokes v Newton, 106 Colo. 61, 101 P2d 21 (1940) 44
People v Carpenter, 464 Mich 223 38
People v Llewellyn, 401 Mich 314 (1977) 45, 46
Plaintiffs/Appellants' Appendix, 32a, P. 5 13
Plaintiffs/Appellants' Appendix, 32a, P.6 13
Plaintiffs/Appellants' Appendix, 32a, P. 8 14
Plaintiffs/Appellants' Appendix, 32a, P. 9 14
Police & Firemen v City of Detroit, 143 Mich App 644 (1939) 44
Rental Property Owners Association of Kent County v City of Grand Rapids, 455 Mich 246 44
Richards v City of Pontiac, 305 Mich 666 (1943) 44
Rockwell v Board of Ed of School Dist of Crestwood, 393 Mich 616 51
School Dist of City of East Grand Rapids, Kent Co v Kent Co Tax Allocation Bd, 415 Mich 381 51
Tenney v Springer, 121 Mich App 47 (1982) 50
Township of Cascade, 118 Mich. App. 580 (1982) 46, 47
Van Buren Public School District v Wayne Circuit Judge, 61 Mich App 6 (1975) 47
Walker's Amusements, Inc v City of Lathrup Village, 100 Mich App 36 (1980) 40
Walsh v City of River Rouge, 385 Mich 623 (1971) 45, 46
Wayne Co Chief Executive v Mayor of City of Detroit, 211 Mich App 243 (1995) 43

STATE STATUTES

Home Rule Cities Act, MCL 117.1, et seq 44
MCLA 124.2 20
I933 PA 18, MCL 125.651 et seq. ..... 1, *seriatim*
MCLA 125.654, et seq 19, 21, 22, 27, 28, 29, 33, 34, 36
MCLA 125.655(3) 1, 2, 5, 6, 9, 10, 14, 19, 22, 26, 28, 34, 35, 39
MCLA 125.656(2) 22
MCLA 125.657(a) 22
MCLA 125.657 27
MCLA 125.660 22
MCLA 125.661(3) 18, 22
MCLA 125.662 ..... 22, 32
Public Employment Relations Act ("PERA"), MCL 423.201 et seq 7, 8, 11, 15, 19,

47, 49, 51
MCLA 423.216(h) 7, 49, 51
MCLA § 125.652 ..... 46, 47
MCLA § 125.654(2) 47
MCLA § 125.690 46
MCLA § 125.696 46

DETROIT CITY CHARTER

Detroit City Charter Chapt. 5, §§ 6-501 - 6-519 37
Detroit City Charter §§ 4-109, 4-110 42
Detroit City Charter Chapt. 5, §§ 6-508 42
Detroit City Charter § 4-113 42
Detroit City Code Chapter 14, Art. 5, 1984 16
Detroit City Code § 14-5-3 (7) 14
Detroit City Code §§ 14-5-3(5) (6) 1, 2, 6, 10, 11 13, 14
Detroit City Code §14-5-7 ..... 11, 12, 14, 36, 37, 42
East Grand Rapids, supra 51
Ex. Sess., No. 18 (1934) 33

TREATISES

Steingold & Etter, 1 Michigan Municipal Law § 1.02, p 1-3 (emphasis added) 29

COUNTER STATEMENT OF QUESTIONS FOR REVIEW

1. Did the Court of Appeals err in holding that the plain meaning of the 1996 Amendments to Michigan's Housing Facilities Act ("Housing Act"), MCL 125.651 et seq, authorized the Detroit Housing Commission to act as an independent employer separate and apart from the City of Detroit, without requiring concurrence or legislative action by the Detroit City Council, where the Housing Act expressly grants the DHC the power to employ its employees, fix their compensation, and prescribe their duties, functions and authority, and only upon the recommendation of the Mayor of Detroit does the City Council have any authority with respect to DHC employees, and then only in the area of classifications and their compensation. MCL 125.655(3).

The Court of Appeals said "No"

Defendants/Appellees answer "No"

Plaintiffs/Appellants answers "Yes"

2. Did the Court of Appeals err in holding that Detroit City Code §§ 14-5-3(5) (6) are invalid and preempted by the Housing Act where these ordinances are in conflict with provisions of the Housing Act and encroach upon an area pervasively regulated by state law, where the Housing Act provides that the DHC may employ its own employees and prescribe their duties, where under the Housing Act, the Mayor has the discretion to act recommend that the City Council fix the classifications and compensation of DHC employees, and where the disputed Ordinances illegally require the Mayor to make such recommendation, and require the City Council to fix the compensation and classifications of DHC employees, converting what is discretionary under the Housing Act to a mandatory action.

The Court of Appeals said "No"

Defendants/Appellees answer "No"

Plaintiffs/Appellants answers "Yes"

3. Did the Court of Appeals err in holding that Detroit City Code §§ 14-5-3 (7) is invalid and preempted by the Housing Act where this ordinance is in conflict with provisions of the Housing Act and encroaches upon an area pervasively regulated by state law, where this Ordinance keeps DHC employees under the jurisdiction of the City's Civil Service System, which means their employment is governed by the City's Human Resources Department and the Detroit Civil Service Commission in all aspects, including recruitment, hire, promotion, discipline, termination and establishing their titles and duties and where, under the Housing Act, MCL 125.655(3), the DHC is the employer of its own employees and "shall" prescribe their duties.

The Court of Appeals said "No"

Defendants/Appellees answer "No"

Plaintiffs/Appellants answers "Yes"

COUNTER STATEMENT OF THE BASIS OF JURISDICTION OF THE SUPREME COURT

Defendants/Appellees City of Detroit ("City") and Detroit Housing Commission ("DHC") acknowledge that this Court has jurisdiction over this appeal from the Court of Appeals' decision pursuant to MCR 7.301(A)(2) and that review is *de novo*.

The City and DHC dispute, however, Plaintiffs/Appellants' contention that the Court of Appeals improperly assumed jurisdiction over Defendants/Appellees' appeal to that Court. See, Argument IX below.

SUMMARY OF ARGUMENT

This lawsuit is an attempt by Detroit City Council and AFSCME to keep the DHC from operating as a functionally independent public body corporate pursuant to the state legislature's directive in Michigan's Housing Facilities Act ("Housing Act"), which governs the management of public housing in Michigan cities.

As conceded by City Council, the 1996 Amendments to the 1933 Housing Act provide that municipal housing commissions are public bodies corporate *by operation of law*, without any further action being required by the City of Detroit ("City") to make it so. In making the arguments herein, the City and DHC are not proposing, nor does the Court of Appeals Opinion hold, that this means the DHC is completely and irrevocably severed from the City in every respect. While it is the intent of the Housing Act to create functionally independent housing commissions, it has been the City's position all along that the DHC is a creature of law, defined by that enabling legislation and that the respective powers and duties of the DHC and the City are provided for in that legislation. As Defendants/Appellees have argued below, the Act expressly enumerates the powers granted to the DHC, and those reserved to the City administration and City Council.

This dispute is focused only on two aspects of the Housing Act and its application: whether the DHC is granted the authority to act as an independent employer by the Housing Act and granted the authority to independently contract for goods and services necessary to its operation; the resolution of those questions by this Court will determine whether the various Ordinances passed by City Council blocking the DHC's independence with regard to employment and contracting violate the intent and letter of the Housing Act and should be declared void.

With this in mind, Defendants/Appellees contend that this case presents solely a question of law and statutory interpretation. The Court will be confronted with a record and argument replete with detailed facts and nuances covering historical events, political disputes, conflicting interpretations of the powers of the Detroit City Council and the Mayor under the Detroit Charter and City Code, and the actions and conduct of the various parties as the City struggled to make the DHC functional and a stand-alone operation under the aegis of HUD and the Housing Act. Ultimately, the facts and history of *this* particular dispute between *these* parties are of little consequence to a determination of the legal questions posed here and should not be permitted to confuse the issue. In this regard, it makes little difference whether, as Plaintiff/Appellant's contend, the Court of Appeals Opinion disregards or erroneously cited the factual record. This case is not about how either the City Council or the Mayor have interpreted or applied the Housing Act, but it is about what the legislature intended and how the Housing Act is to be interpreted with respect to the DHC as an employer and a contracting entity. In light of this, Defendants/Appellees contend as follows:

1. The Court of Appeals was correct in holding that the 1996 Amendments to Michigan's Housing Facilities Act ("Housing Act"), MCL 125.651 et seq did, by operation of law, sever Defendant City of Detroit's employment relationship with persons assigned to and employed at the Detroit Housing Commission. The Housing Act expressly grants the DHC the power to employ its employees, fix their compensation, and prescribe their duties, functions and authority. MCL 125.655(3). Only upon the recommendation of the Mayor of Detroit does the City Council have any authority with respect to DHC employees, and only in the area of classifications and their compensation.

2. The Court of Appeals was correct in holding that Detroit City Code §§ 14-5-3(5) (6) are invalid and preempted by the Housing Act because these ordinances are in conflict with provisions of the Housing Act and encroach upon an area pervasively regulated by state law. The Housing Act provides that the DHC may employ its own employees and prescribe their duties. Under the Housing Act, the Mayor has the discretion to recommend that the City Council fix the classifications and compensation of DHC employees. The disputed Ordinances illegally require the Mayor to make such recommendation, and require the City Council to fix the compensation and classifications of DHC employees, converting what is discretionary under the Housing Act to a mandatory, self-perpetuating action. Moreover, the Trial Court's finding that a 1996 Memorandum of Agreement with HUD, adopted by City Council, constituted the statutory mayoral recommendation under MCL 125.655 is misplaced, since the MOA, by its terms, expired on June 30, 1997.

3. The Court of Appeals was correct in holding that Detroit City Code §§ 14-5-3 (7) is invalid and preempted by the Housing Act because this ordinance is in conflict with provisions of the Housing Act and encroaches upon an area pervasively regulated by state law. This Ordinance keeps DHC employees under the jurisdiction of the City's Civil Service System, which means their employment is governed by the City's Human Resources Department and the Detroit Civil Service Commission in all aspects, including recruitment, hire, promotion, discipline, termination and establishing their titles and duties. Under the Housing Act, MCL 125.655(3), the DHC is the employer of its own employees and "shall" prescribe their duties. This Ordinance usurps entirely the right and authority under the Housing Act to employ its own employees.

4. The Court of Appeals properly assumed jurisdiction over Defendants/Appellees'

appeal. AFSCME contends that it was denied the right and opportunity to adjudication of Count I of its Complaint which sought a preliminary injunction pursuant to Section 16(h) of the Public Employment Relations Act. Under PERA, a court can enter a preliminary injunction until such time as a decision is reached by the Michigan Employment Relations Commission. MCL 423.216(h). Here, the trial court awarded permanent injunction under Count II of the Complaint that granted AFSCME all the relief it sought under Count I, namely, that the status quo was maintained and all DHC employees remained City employees under the City of Detroit's collective bargaining agreements and health, benefit and pension plans. Moreover, AFSCME's claim is moot, since MERC has now issued a final Order (Plaintiffs/Appellants' Appendix, 26a), and the status quo of AFSCME - represented employees was maintained through the date of that final order.

5. The Court of Appeals' decision is not in conflict with Grand Rapids Employees Ind Union v City of Grand Rapids, 235 Mich App 398; 597 NW2d 284 (1999). The Court in Grand Rapids concluded that, while a city council *may* adopt an ordinance defining the powers of a housing commission as an employer, it must be consistent with the Housing Act. Unlike here, the Grand Rapids Court was not confronted with ordinances that impermissibly retain employer status and powers to the City Council and abridges the rights and powers of the DHC expressly granted under the Housing Act. Moreover, the Grand Rapids Court did not have before it, nor did it consider and opine on, a situation such as here where a City Council has passed an Ordinance *requiring* the Mayor to do acts which are left to the Mayor's discretion under the Housing Act.

COUNTER STATEMENT OF PROCEEDINGS BELOW

1. The Complaints and Initial Temporary Restraining Order

Plaintiffs/Appellants American Federation of State, County and Municipal Employees ("AFSCME") filed its Complaint on September 19, 2001, seeking injunctive relief maintaining the status quo pending the outcome of its unfair labor practice charge filed with the Michigan Employment Relations Commission ("MERC"). AFSCME sought the injunction pursuant to §16(h) of the Public Employment Relations Act ("PERA"), MCL 423.201 et seq, which permits a party filing an unfair labor practice charge with MERC to obtain an injunction in the Circuit Court to maintain the status quo pending outcome of the MERC proceedings. (Defendants/Appellees' Appendix, Vol 2, 0500b).

The Trial Court entered a Temporary Restraining Order on September 20, 2001 barring the City of Detroit from separating the Detroit Housing Commission ("DHC") and severing its employment relationship with AFSCME - represented employees of the Detroit Housing Commission pending the Trial Court's further ruling on the Complaint. (Plaintiffs/Appellants' Appendix, 13a) .

AFSCME filed its First Amended Complaint on October 18, 2001 adding a Count II seeking declaratory relief that, under the 1996 Amendments to Michigan's Housing Facilities Act ("Housing Act"), MCL 125.651 et seq, the DHC was not a separate employer and the City of Detroit could not sever its employment relationship with AFSCME - represented employees (Plaintiffs/Appellants' Appendix 131a) .

Intervening Plaintiffs/Appellants City Council and its various members filed its Complaint and First Amended Complaint on September 20, 2001 and October 19, 2001 respectively, seeking Declaratory Relief that certain Ordinances passed by City Council with

respect to the Detroit Housing Commission, its employees and operations were valid and enforceable. (Defendants/Appellees' Appendix, Vol 1, 61b; Plaintiffs/Appellants' Appendix, 156a).

Both Plaintiffs/Appellants AFSCME and Plaintiffs/Appellants City Council requested injunctive relief barring the DHC from becoming an independent employer of its employees and barring the City of Detroit from severing its employment relationship with employees assigned to the DHC.

Defendants/Appellees opposed the intervention and opposed the request for injunctive relief; Defendants/Appellees also challenged the validity of the Ordinances at issue and contended that these Ordinances were preempted by the Housing Act (See generally, (Defendants/Appellees' Appendix, Vol 1, 26b, 337b and 426b).

2. Hearings and Ruling in the Trial Court

a. Interim Injunction

The Trial Court held hearings on October 19 and November 2, 2001; The Court announced its first Bench Ruling on November 15, 2001. (Defendants/Appellees' Appendix, Vol 2, 0826b; 0853b; Plaintiffs/Appellants' Appendix, 44a)). Pursuant to that ruling, the Court entered an interim Order on January 25, 2002, barring the City from severing its employment relationship with employees assigned to the Detroit Housing Commission, but only through June 30, 2002. This order was based on the Trial Court 's finding that then Mayor Archer had in effect "triggered" the recommendation provided for in the Housing Act, MCL 125.655 (3) which

relationship with employees assigned to the Detroit Housing Commission (Plaintiffs/Appellants' Appendix, 21a).

b. Summary Disposition and Permanent Injunction

On February 14, 2002, Defendants/Appellees moved for summary disposition pursuant to MCR 2.116 (8) and (10) on the First Amended Complaint of Intervening Plaintiffs/Appellants City Council, and on Count II of Plaintiffs/Appellants AFSCME's First Amended Complaint. Plaintiffs/Appellants filed Cross-Motions for Summary Disposition thereafter. (Defendants/Appellees' Appendix, Vol 2, 0704b; 0730b; 0756b; 0820b) .

The Court heard the Cross-Motions on March 21, 2002 and gave its Bench Ruling on April 10, 2002. A motion to settle the Order was heard on May 10, 2002. (Defendants/Appellees' Appendix, Vol 2, 0926b; Plaintiffs/Appellants' Appendix, 109a; Defendants/Appellees' Appendix, Vol 2, 1005b).

From the Bench at the April 10, 2002 Ruling Hearing, the Court found:

- that the Housing Act does not include the power to employ among its enumerated powers (Defendants/Appellees' Appendix, Vol 2, 0926b, pp. 6-7);

- that, pursuant to Grand Rapids, and the fact that the Housing Act allows for both a housing commission and the City to fix compensation and classification of employees, the Housing Act is *permissive* rather than *mandatory* and does not, *by operation of law* authorize the Detroit Housing Commission to employ its own employees (Defendants/Appellees' Appendix, Vol 2, 0926b, pp.7-9);

- that the City of Detroit, by virtue of a Memorandum Of Agreement entered into in 1996 with HUD and approved by City Council, determined to retain City employees assigned to the Detroit Housing Commission as City of Detroit employees and thereby "triggered" the mayoral recommendation found in MCL 125.655 (3) (Defendants/Appellees' Appendix, Vol 2, 0926b, pp.10-12);

- that the challenged City Council Ordinances, Detroit City Code §§14-5-3 (5),(6),(7) which require the mayor to recommend and require City Council to adopt compensation and classification for DHC employees, and which keep DHC employees in the Detroit civil service system are not preempted by the Housing Act, (Defendants/Appellees' Appendix, Vol 2, 0926b, pp. 14-15);

- that the challenged City Council Ordinances, Detroit City Code §§14-5-3(2) and Detroit City Code §14-5-7, which mandates the meeting and reporting schedules of the DHC are not preempted by the Housing Act, (Defendants/Appellees' Appendix, Vol 2, 0926b, pp. 16-17);

- that the challenged City Council resolutions and ordinances that require city Council approval for the Detroit Housing Commission to enter into contracts which exceed a value of $25,000.00, and that limit the Detroit Housing Commission ability to hire outside contractors, are preempted by the Act. (Defendants/Appellees' Appendix, Vol 2, 0926b, pp. 15, 17-18).

The Court entered its final order on May 21, 2002. (Plaintiffs/Appellants' Appendix, 21a). While that Order did not address AFSCME's request for injunctive relief under §16(h) of PERA, the final Order granted AFSCME *more* than the full relief requested under Count I of its Complaint: The PERA injunction would have allowed the Court to maintain the status quo only during the pendency of the MERC proceedings, while the Trial Court's final order was a permanent injunction maintaining the status quo.

In the May 21, 2002 Order, the Court held:

- The 1996 Amendment to the Michigan Housing Facilities Act, MLC 125.651 et seq. ("the Act"), did not by operation of law sever Defendant City of Detroit's employment relationship with persons assigned to and employed at Defendant Detroit Housing Commission;

- Defendant City of Detroit has exercised its authority pursuant to the Act, the Detroit City Charter and the local ordinances of the City of Detroit to establish compensation ranges and classifications to be used by the Detroit Housing Commission;

- All employees who currently work at the Detroit Housing Commission and all persons who are hired to work at the Detroit Housing Commission are City of Detroit employees;

- Defendant City of Detroit may only sever its employment relationship with Detroit Housing Commission employees with the concurrence of the Detroit City Council pursuant to the procedures established by the Detroit City Charter, specifically including but not limited to, the Charter's ordinance procedure.

(Plaintiffs/Appellants' Appendix, 21a).

The Court also held that certain Ordinances in dispute were valid and not preempted by the Housing Act :

- Detroit City Code §14-5-3(5) is valid and not preempted by the Act;
- Detroit City Code §14-5-3(6) is valid and not preempted by the Act;
- Detroit City Code §14-5-3(7) is valid and not preempted by the Act;
- Detroit City Code §14-5-3(9) is preempted by the Act;
- Detroit City Code §14-5-3(10)(a) (d) and (e) is preempted by the Act to the extent that "Contracts" and "Purchase Orders" referenced in those provisions are not related to real property;
- Detroit City Code §14-5-3(2) is valid and not preempted by the Act;
- Detroit City Code §14-5-7 is valid and not preempted by the Act;

(Plaintiffs/Appellants' Appendix, 21a).

Based on its holdings, the Court Ordered a sweeping injunction as follows:

- Absent legislative action pursuant to the Detroit City Charter, all employees represented by AFSCME who work and all persons who are hired to work in classifications covered by the AFSCME collective bargaining agreements at the Detroit Housing Commission are employees of the City of Detroit, are participants in the City of Detroit pension, health and benefits plans and are covered by all terms of their collective bargaining agreements between AFSCME and the City of Detroit;

- absent legislative action pursuant to the Detroit City Charter, all employees who work who are represented by other labor organizations and all persons who are hired to work in classifications covered by other labor organizations' collective bargaining agreements at the Detroit Housing Commission and are employees of the City of Detroit, are participants in the City of Detroit pension, health and benefits plans and are covered by all terms of their respective collective bargaining agreements;

- absent legislative action pursuant to the Detroit City Charter, all employees who work and all persons who are hired to work at the Detroit Housing Commission and who are not represented by labor organizations are employees of the City of Detroit and are participants in the City of Detroit pension, health and benefits plans;

- absent legislative action pursuant to the Detroit City Charter, Defendants City of Detroit and the Detroit Housing Commission shall recognize and treat all persons employed by and hired to work at the Detroit Housing Commission as employees of the City of Detroit;

- Absent legislative action pursuant to the Detroit City Charter, Defendants City of Detroit and the Detroit Housing Commission shall recognize and treat all persons employed by and hired to work at the Detroit Housing Commission as participants in the City of Detroit's pension, health and benefit plans pursuant to the terms of those plans;

- Defendants City of Detroit and the Detroit Housing Commission shall apply the terms of the City of Detroit's respective collective bargaining agreements to all persons employed in and hired into positions covered by those respective agreements at the Detroit Housing Commission;

(Plaintiffs/Appellants' Appendix, 21a).

3. The Appeal To The Court Of Appeals

The City and DHC filed an Emergency Claim of Appeal on May 24, 2002 and moved for immediate consideration by the Court of Appeals, which was granted. After briefing, the Court of Appeals heard oral argument on June 18, 2002, and issued its Judgment on July 23, 2002. The Court of Appeals found that, as a result of the 1996 Amendments, the Housing Act authorized the Detroit Housing Commission to act as an autonomous employer separate and apart from the City of Detroit, without requiring concurrence or legislative action by the Detroit City Council. (Plaintiffs/Appellants' Appendix, 32a, p.6). The Court relied in part on the holding in Grand Rapids Employees Ind Union v City of Grand Rapids, 235 Mich App 398; 597 NW2d 284 (1999) to the effect that the characteristics of an employer includes all those powers granted to housing commissions by the Housing Act (Plaintiffs/Appellants' Appendix, 32a, p. 5). The Court of Appeals distinguished Grand Rapids on its facts, but also held that nothing in that opinion supported Plaintiff/Appellant's argument – and the Trial Court's conclusion – that legislative action by the City Council was required to give effect to the Housing Act's prescription that the DHC was an independent employer (Plaintiffs/Appellants' Appendix, 32a, pp. 6-7, n. 2).

The Court of Appeals further reversed the Trial Court with respect to its holding regarding the validity of certain City Council ordinances that kept DHC employees as employees of the City. The Court of Appeals held that Detroit City Code §§ 14-5-3(5), (6) and §§ 14-5-3

(7) are invalid and preempted by the Housing Act because they conflict with provisions of the Housing Act and encroach upon a field of regulation occupied by the state. Specifically, the Court of Appeals found that the Housing Act provides that the DHC may employ its own employees and prescribe their duties, and that under the Housing Act, the Mayor has the *discretion* to recommend that the City Council fix the classifications and compensation of DHC employees. The Court held that Detroit City Code §§ 14-5-3(5), (6) illegally *requires* the Mayor to make such recommendation, and *requires* the City Council to fix the compensation and classifications of DHC employees, converting what is discretionary under the Housing Act to a mandatory action. (Plaintiffs/Appellants' Appendix, 32a, p. 8).

Similarly, the Court of Appeals held Detroit City Code § 14-5-3 (7) invalid and preempted by the Housing Act because the ordinance defied statutory directives of the Housing Act and seeks to control an area regulated by the Act, because this Ordinance keeps DHC employees under the jurisdiction of the City's Civil Service System, which means their employment is governed by the City's Human Resources Department and the Detroit Civil Service Commission in all aspects, including recruitment, hire, promotion, discipline, termination and establishing their titles and duties and where, under the Housing Act, MCL 125.655(3), the DHC is the employer of its own employees and "shall" prescribe their duties. (Plaintiffs/Appellants' Appendix, 32a, p. 9).[1]

4. The MERC Unfair Labor Practice Proceedings

AFSCME's unfair labor practice charges are set out in its original charge dated September 18, 2001, and its First Amended Charge dated October 5, 2001. These included a panoply of allegations that: the DHC had bypassed AFSCME by negotiating directly with

employees on a number of occasions over the terms and conditions of their employment once the DHC was established as a separate entity: the DHC unilaterally implemented these terms and conditions of employment; the DHC made offers to its employees based on terms and conditions not negotiated with AFSCME; the DHC had refused to bargain with AFSCME over the terms and conditions to be offered employees once the DHC was separated from the City; and, the DHC had, on several occasions refused to provide information requested by AFSCME. After several hearings, MERC ALJ Roy Roulhac dismissed the majority of these allegations as unfounded, and determined only that the City had violated PERA by failing to provide the names of AFSCME - represented employees who had responded to DHC offers of employment (Plaintiffs/Appellants' Appendix, 27a-31a). ALJ Roulhac's decision was affirmed *pro forma* by MERC with no appeal by AFSCME of the dismissed charges. (Plaintiffs/Appellants' Appendix 26a). With the MERC's decision, the underlying unfair labor practices proceedings that were the basis of Count I of AFSCME's Complaint were entirely concluded.

[1] The other ordinances at issue, Detroit City Code §14-5- 3(2), 14-5-7(1), 14-5-3(9) and 14-5-10, considered by the Court of Appeals (Plaintiffs/Appellants' Appendix, 32a, pp. 9-11) are not at issue in this Appeal by Plaintiffs/Appellants.

COUNTER STATEMENT OF FACTS

1. The DHC Was Created In 1933

The City established the Detroit Housing Commission ("DHC") in 1933, pursuant to the Michigan Housing Facilities Act, 1933 PA 18, MCL 125.651 et seq. ("Housing Act"). [2] The Housing Act provided that certain cities could create a commission to "purchase, acquire, construct, maintain, operate, improve, extend, and/or repair housing facilities and to eliminate housing conditions which are detrimental to the public peace, health, safety, morals, and/or welfare."[3]

2. City And HUD Work Together To Improve The DHC

The United States Department of Housing and Urban Development ("HUD") funds one hundred percent of DHC's operating revenues. (Defendants/Appellees' Appendix, Vol 1, 001b, at page 2). From 1979 through 1997, HUD rated DHC a poor performer, and DHC was firmly entrenched on HUD's list of severely troubled Public Housing Authorities. (Defendants/Appellees' Appendix, Vol 1, 003b, at page 1). DHC was failing its essential purpose: more than half of its properties were vacant; many units needed substantial repairs; it could not collect rent in a timely manner; nor could it meet many of HUD's standards. (Id. at 1).

To cure these problems and effectively serve the housing needs of Detroit's citizens, HUD and the City of Detroit entered into a Partnership Agreement in December 1995 (Defendants/Appellees' Appendix, Vol 1, 010b) and a Revised[4] Memorandum Of Agreement ("MOA") approved by the City Council in September 1996 and executed in October 1996 (Plaintiffs/Appellants' Appendix, 251a; 252a, *et seq.*). At the time, the City Council favored

---

[2] Chapter 14, Art. 5, 1984 Detroit City Code (Defendants/Appellees' Appendix, Vol 1, 406 b).
[3] In Re Brewster Street Housing Site in City of Detroit, 291 Mich 313, 323; 289 NW 493 (1939).
[4] The October 1996 MOA was a revision of a prior proposed MOA that had not passed City Council.

separation and mandated that speedy action be taken toward it. (Defendants/Appellees' Appendix, Vol 1, 0017b) . The Revised MOA, on which the trial court relied by its terms, expired on June 30, 1997. (Plaintiffs/Appellants' Appendix, 252a, at 254a) . The DHC was taken off the HUD "troubled" list in 1997.

Contrary to Plaintiff/Appellant AFSCME's assertion and citations at Page 2 of it's brief, neither the Court of Appeals Opinion, nor the MOA, state that "the City would need City Council's approval to expand Detroit Housing Commission's powers pursuant to the new Housing Act amendments" (Plaintiffs/Appellants AFSCME's brief, p.2).[5] To the contrary, the MOA makes it clear that the intent of the MOA is to "provide the steps to be taken to create a separation of systems for public housing" (Plaintiffs/Appellants' Appendix, 258a). The MOA goes on to state that the reason for this transition toward separation stems from the fact that the DHC "cannot manage the critical components of its public housing program while dependent on City operated systems, which are not suited for the efficient and effective operation of public housing" (Plaintiffs/Appellants' Appendix, 258a). It is in the context of this move toward independence that HUD and the City agreed only that the "MOA also requires the DHC to seek additional approvals from City Council in order to take advantage of state legislation providing greater authority for housing commissions". Thus, the understanding embodied in the MOA was *not* that the Housing Act required City Council approval, but only that the MOA did so.[6] As indicated below, the Housing Act clearly apportions rights and powers between the DHC and City Council. The DHC might well require City Council approval to obtain powers retained

[5] The MOA pages cited (263a and 320a) indicate only that City Council approval was required for any amendments or changes to the MOA itself, and makes no reference to DHC powers under the Housing Act.

[6] As indicated above It should be recalled here that the 1996 MOA came into existence because City Council refused to approve the earlier version because it had been fashioned without its

under the Act by City Council – such as the right to hold property in the name of the DHC rather than the City (see, MCL 125.661(1)). However, nothing in the MOA indicates in any fashion that the DHC must obtain City Council approval to act as independent employer. Plaintiff/Appellant's argument that this document – which, in any case, expired as of 1997 – serves as precedent for Plaintiffs/Appellants' proposed legislative interpretation that the DHC can be an independent employer only if City Council says so, is nothing but a self-referential tautology.

3. HUD Wants Separation of the DHC From the City

These 1995 and 1996 HUD/City agreements were intended to achieve full functional separation of DHC from the City so as to allow DHC to overcome its inefficiencies and properly serve its housing residents. In a letter dated October 12, 2000, HUD reiterated that it was HUD's "expressed intent and strategy embodied by the Partnership Agreement entered into between HUD and the city of Detroit on December 15, 1995, and the Revised Memorandum of Agreement (MOA) entered into between HUD, the City and the DHC on October 14, 1996," that DHC's "legal status" and its "major operational functions" be separated "from the governmental structure of the city of Detroit" (Defendants/Appellees' Appendix, Vol 1, 0166b). On October 11, 2001, HUD again emphasized that separation of the Detroit DHC "is necessary to ensure that DHC operates effectively and efficiently" (Defendants/Appellees' Appendix, Vol 1, 0167b). In particular, HUD noted that DHC is:

> maintaining two sets of records: one set which satisfies HUD requirements and another which complies with the City's accounting structure. This dual system is both cumbersome and costly. The City's involvement in every aspect of the Commission's financial obligations has resulted in a tremendous administrative overhead of approximately $1.2 million which exceeds the Commission's resources and raises questions about legitimate PHA costs. (Id.)

---

approval. Of course the City Council would insist on writing into such a document a requirement that it approve further extensions of DHC authority.

4. State Law Establishes Housing Commissions As Separate Public Bodies Corporate

In 1996, the Legislature substantially amended the Housing Act "to modernize the operations and financial powers of housing commissions."[7] The Legislature sought to expand the authority of housing commissions by reorganizing them as "independent and autonomous government entities," making them "public bodies corporate" with the capability to contract and to "sue or be sued in any court of the state." Id, MCL 125.654, et seq. Consistent with its grant of autonomy, the Act expressly authorizes housing commissions to "employ and fix the compensation of a director, . . . and other employees as necessary." MCL 125.655(3). The legislative history notes the existing law was "antiquated" and "[did] not reflect the reality of today's public housing climate."[8] Pursuant to this statutory mandate, other Michigan cities have recognized their housing commissions as separate entities. Grand Rapids, supra. Independent Housing Commissions are now the norm among US municipalities.[9]

5. Mayor Attempts To Comply With State Law And Implement HUD Intent

To comply with Michigan law and improve DHC's operations, Mayor Archer on July 17, 2001, notified the City Council that DHC would begin functioning as a "public body corporate" in accordance with the Act as of September 21, 2001. (Defendants/Appellees' Appendix, Vol 1, 0025b). The Mayor asked City Council to approve a proposed Intergovernmental Agreement between the City and DHC to allow current City employees who elect to be employed by the independent DHC to continue to participate in the City's health and retirement plans. (Id). Mayor Archer also submitted a proposed Executive Organization Plan amendment recognizing

---

[7], House Legislative Analysis Section, House Bill 4973, Public Act 338 of 1996 (Second Analysis 7-24-96) (Defendants/Appellees' Appendix, Vol 1, 0086b).
[8] (Defendants/Appellees' Appendix, Vol 1, 0086b).
[9] See, Affidavit of John Nelson, attached to Defendants' Brief In Opposition To PERA 16(h) Injunction. (Defendants/Appellees' Appendix, Vol , 0276b)

DHC as a separate "Statutory Agency;" and a proposed Ordinance to implement the minimum statutory requirements of the Housing Act (Plaintiffs/Appellants' Appendix 327, 328,329a)

6. City Council Blocks Separation

City Council rejected the proposed Intergovernmental Agreement[10] and the Executive Reorganization Plan amendment, and instead adopted a series of Ordinances and Resolutions, which blocked the separation of the DHC and contravene the provisions of the 1996 Housing Act by retaining to City Council powers and authority conferred on the DHC by the Housing Act. (Plaintiffs/Appellants' Appendix, 340-366a; Defendants/Appellees' Appendix, Vol 1, 0186b)).

City Council's rejection of the proposed Intergovernmental Agreement was calculated to turn DHC employees against separation and provide support to AFSCME's opposition to separation, in part because it meant that employees electing to stay with the independent DHC were denied the right to remain in the City's Pension System and Employee Benefits Plan. This was an action the City Council need not have taken. Under the City Code, employees such as those of the Housing Commission, even if separated, could remain in the City's Pension System and Employee Benefits Plan if City Council approved it. For example, Detroit Library employees, although no longer City employees after the separation, were allowed to remain in the City's Pension System. (Defendants/Appellees' Appendix, Vol 1, 171b, at Par. 10).

On September 17, 2001, the City Council adopted a "Resolution in opposition to Separation of Detroit DHC from the City of Detroit and retaining all city employees assigned to the Detroit DHC as City of Detroit Employees" (Plaintiffs/Appellants' Appendix, 352a). That

[10] The proposed Intergovernmental Agreement is authorized by MCL 124.2, which provides that a municipal corporation is empowered to contract with other municipal corporations for ownership, operation or performance of property, facilities or services. Although City Council rejected the Mayor's proposed intergovernmental agreement, it has effectively admitted that DHC is a public body corporate competent to enter into such an agreement.

Resolution asserted that City Council action was necessary to make DHC a "public body corporate" separate from the City.[11]

On October 10, 2001, the City Council reversed itself and adopted a Resolution recognizing that the 1996 Amendments made DHC a "public body corporate" with no further action by the City Council:

> The state statute provides that [public housing] commissions shall be public bodies corporate. This provision of state law is sufficient to establish commissions as public bodies corporate, and City Council action is not necessary to affirm this. (Plaintiffs/Appellants' Appendix, 361a)

This is a correct reading of the Housing Act, which states: "The commission *shall* be a public body corporate." MCL 125.654(5) (emphasis added). Nevertheless, as discussed below, the Ordinances fail to respect the public body corporate status of the DHC and contravene other provisions of the 1996 Amendments by retaining to City Council powers expressly granted to the DHC.

[11] The Resolution states: "...the Detroit City Council believes that the mayor and the DHC lack the legal authority to reorganize the DHC as an independent authority without the express action and approval action of the city council...." (Plaintiffs/Appellants' Appendix, 353 a).

ARGUMENT

INTRODUCTION

1. Michigan's Housing Act Apportions Certain Rights And Powers To The Detroit Housing Commission And Retains Other Rights And Powers To The City.

Under the Housing Act, the DHC has the power to:

- Sue and be sued (MCL 125.654(5)(a)
- Form corporations (MCL 125.654(5)(b)
- Serve as a shareholder of nonprofit corporations (MCL 125.654(5)(c)
- Elect its own officers (MCL 125.655(3)
- Employ and fix the compensation of its employees, including a director (MCL 125.655(3)
- Make determinations as to low-income housing and the elimination of housing that is detrimental (MCL 125.657(a)
- Purchase, lease, sell, exchange, transfer, mortgage, improve, engage or construct any real or personal property (MCL 125.657(b)
- Exercise complete control over its projects (MCL 125.662)

The City Council retains the following powers, the first two of which are subject to the condition precedent that the Mayor initiates a recommendation:

- Upon the Mayor's recommendation, City Council can remove a member of the housing commission (MCL 125.654(3))
- Upon the Mayor's recommendation, City Council may set the compensation level of housing commission employees (MCL 125.655(3))
- City Council may specify by ordinance or resolution whether deeds, mortgages, leases, etc. shall be in the name of the city or the housing commission (MCL 125.661(1)) and transfer property to the DHC (MCL 125.661(3)).
- Approve grants and bonds (MCL 125.656(2))
- Authorize use of eminent domain (MCL 125.660)
- Authorize payment in lieu of taxes (MCL 125.661(a))

2. City Council Admits The DHC Is A Public Body Corporate By Operation Of Law

The City Council has expressly acknowledged that the DHC is an independent public body corporate by virtue of the 1996 Housing Act amendments. A "public body corporate" under Michigan law is a separate legal entity, distinct from the City, with the power to sue and be sued, enter into contracts, and, under the Housing Act, and is the sole employer of its employees. Nevertheless, the City Council, in a series of resolutions and ordinances, sought to prevent the

DHC from realizing the functional separation required by the Housing Act, and to unlawfully retain for itself powers and authority expressly granted to the DHC by that Act.

3. City Council's Actions To Block DHC Separation Violate The Housing Act

The City has worked closely since 1995 with the federal Department of Housing and Urban Development (HUD), which provides 100% of DHC funding, to move the DHC out of its prior "troubled" status and make it a separate and efficient public housing commission. As recognized in the MOA, in 1996:

> It is important to note that the DHC can not immediately separate from the City with respect to all of the functions relating to financial management, procurement and personnel. The Agency does not have its own systems in place but will take steps under this MOA to create its own administrative systems and then move toward operating these systems separate from the City of Detroit (Plaintiffs/Appellants' Appendix, 258a)

The effort begun under the MOA now needs to be completed. A public housing commission functionally separate from the local governing body is the prevailing model sanctioned by HUD and found in almost all major cities. Legislation similar to the Housing Act has been interpreted by courts in other states as establishing public housing authorities as separate bodies corporate. City Council's resolutions and ordinances undermine the long standing efforts by the City to honor HUD's expressed intent that the DHC needs to become functionally separate to operate effectively and efficiently. (Plaintiffs/Appellants' Appendix, 258a)

4. The Grand Rapids Case Holds That a City Council May Not Withhold Or Usurp Powers Granted To A Housing Commission by State Law

The Ordinances upheld by the Trial Court are preempted by the Housing Act because they contain certain provisions directly contrary to that Act and encroach on an area regulated by state law. The Trial Court relied on Grand Rapids Employees Ind Union v City of Grand Rapids,

235 Mich App 398; 597 NW2d 284 (1999). That case, however, holds that a housing commission is the sole employer of its employees. Grand Rapids also holds that: (1) a city does not have the power to adopt an ordinance that defeats the clear legislative intent to sever housing commissions from local governmental bodies; and (2) a city council may not, by ordinance, deny or withhold from a housing commission powers granted by the statute, whether explicitly or by implication. The Grand Rapids Court enforced the ordinance in that case because, unlike the Detroit Ordinances, it is entirely in compliance with the Housing Act's delegation of powers to a housing commission.

5. Even With A Separated DHC, AFSCME–Represented Employees Will Continue To Be Represented By AFSCME And Protected By A Collective Bargaining Agreement

In granting declaratory relief to AFSCME, the Trial Court ordered that the City maintain its collective bargaining relationship with all AFSCME - represented employees, a relationship that is not threatened in any way by separation. If the DHC separates, then DHC employees will either (1) elect to remain with the City and, pursuant to negotiations with AFSCME, be placed in other City departments consistent with the procedures outlined in the AFSCME Master Agreement and City personnel rules, or (2) elect to remain employees of the DHC, in which case the City cannot continue to be their employer; as to these employees, the successor provision of the AFSCME Master Agreement would be in effect and the DHC would be obligated to recognize AFSCME and bargain with it over the terms and conditions of employment for those employees.

6. City Council's Actions Contravene The Expressed Will Of The Legislature, The Intent Of HUD, And Are Contrary To The Public Interest

The Court of Appeals was correct in reversing the Trial Court, which upheld City Council actions that contravened the express provisions of the Housing Act, and frustrate the intent of HUD. Under the standards for injunctive relief, the Trial Court should have considered

the public interest in better public housing through a separate Detroit Housing Commission as advanced by HUD. The Trial Court's Order prevents the establishment of a model of public housing management adopted by virtually all other major cities.

I. THE COURT OF APPEALS DECISION DOES NOT CONFLICT WITH THE GRAND RAPIDS CASE AND CORRECTLY INTERPRETS THE HOUSING ACT TO THE EFFECT THAT THE DETROIT HOUSING COMMISSION IS AN INDEPENDENT EMPLOYER UNDER THE ACT

A. The Court of Appeals Opinion is not In Contravention Of MCR 7.215

MCR 7.215(I) sets forth the rules regarding the resolution of conflicts between opinions in the Court of Appeals.

> (1) *Precedential Effect of Published Decisions.* A panel of the Court of Appeals must follow the rule of law established by a prior published decision of the Court of Appeals issued on or after November 1, 1990, that has not been reversed or modified by the Supreme Court, or by a special panel of the Court of Appeals as provided in this rule.
>
> (2) *Conflicting Opinion.* A panel that follows a prior published decision only because it is required to do so by subrule (1) must so indicate in the text of its opinion, citing this rule and explaining its disagreement with the prior decision. The panel's opinion must be published in the official reports of opinions of the Court of Appeals.

In the present case, AFSCME relies on MCR 7.215, which is irrelevant to the issues before this Court. The Court of Appeals interpreted the 1996 Amendments to the Housing Act to provide that housing commissions are autonomous employers and that neither the Act nor the Grand Rapids case requires legislative action by the municipality to make them so. This is consistent with the Housing Act and consistent with Grand Rapids. As further shown below, the instant Court of Appeals Opinion and Grand Rapids are consistent in their reading of the Housing Act, but differ on the facts under consideration. The factual distinction between the cases is such that, while Grand Rapids is instructive on the issue of whether the Housing Act

intends that public housing commissions may act as independent employers, it does not mandate the outcome proposed by Plaintiffs/Appellants on the facts here. And the fact that the Court of Appeals in this case did not reach the result Plaintiffs/Appellants sought does not put it in conflict with Grand Rapids.

In the present case, the Legislature has clearly stated in MCL 125.655(3) that the Detroit Housing Commission "shall" be the employer of its employees. The statute states:

> A president and vice-president and other officers designated by the commission shall be elected by the commission. **The commission may employ and fix the compensation of a director, who may also serve as secretary, and other employees as necessary**. Upon the recommendation of the appointing authority, the governing body of an incorporating unit may adopt a resolution either conditioning the establishment of any compensation of an officer or employee of a commission upon the approval of the governing body or establishing compensation ranges and classifications to be used by a commission in fixing the compensation of its officers and employees. **The commission shall prescribe the duties of its officers and employees and shall transfer to its officers and director those functions and that authority which the commission has prescribed.** The commission may employ engineers, architects, attorneys, accountants, and other professional consultants when necessary. [MCL 125.655(3) (emphasis added).]

The Court of Appeals correctly interpreted MCL 125.655(3). The Legislature, through the Housing Act, clearly contemplated that the Detroit Housing Commission must be the employer of the Detroit Housing Commission employees. The statute uses the mandatory term "shall" thereby requiring that the Detroit Housing Commission must set forth the duties of its employees.

B. The Grand Rapids Case Holds That Housing Commissions Are Independent Bodies Corporate And Are The Sole Employer Of Their Employees

The Trial Court erroneously relied to a great degree on the case of Grand Rapids, but failed to correctly analyze and apply the holdings of that case. (Plaintiffs/Appellants' Appendix, 115a-117a) . In Grand Rapids, the Court of Appeals held that the Housing Act is self-

effectuating and that after the 1996 amendments, housing commissions are "creature[s] of statute":

> The Grand Rapids Housing Commission is a creature of statute. MCL 125.651 et seq.; MSA 5.3011 et seq. Its powers and duties are statutorily determined and it has the authority to enter contracts necessary to effectuate them. MCL 125.654; MSA 5.3014, MCL 125.657; MSA 5.3017. . . . [235 Mich App at 400].

In Grand Rapids, the Court of Appeals concluded that the city council may adopt an ordinance defining the powers of a housing commission as an employer ***if that ordinance is consistent with the Housing Act***, but that an ordinance may not deny or withhold powers granted by the statute, whether explicitly or by implication.

Unlike the Ordinances at issue here, the Grand Rapids ordinance does not conflict with the Housing Act and does not grant impermissible powers to the Grand Rapids city council, but rather grants powers and authority to the Grand Rapids Housing Commission as prescribed in the Housing Act.[12] Unlike here, Section 3 of the Grand Rapids ordinance expressly makes the Grand Rapids Housing Commission the employer of all its employees:

> The Grand Rapids Housing Commission may appoint a Director who may also serve as Secretary, and other employees or officers as necessary. The Grand Rapids Housing Commission shall prescribe the duties of its officers and employees and shall have the sole authority to fix their compensation and fringe benefits, and terms and conditions of employment. (Plaintiffs/Appellants' Appendix, 435a).

In Grand Rapids, the union argued that because the ordinance did not expressly grant the commission the power to dismiss employees, the commission lacked the power to do so. Id., 235 Mich App at 406. The Court rejected this argument, holding that the city would not have the power to adopt an ordinance that "would defeat the clear legislative intent to permit severance

[12] The Ordinance reads: "The Grand Rapids Housing Commission shall have all of the powers and duties vested or permitted to be vested in the Housing Commission by Act 18 of the Public Acts of 1933, Ex. Sess., as amended heretofore or hereafter, and any laws heretofore or hereafter enacted which are supplemented thereto, *it being the intention of this Article to vest in the Grand*

between housing commissions and the cities they serve." citing Department of Treasury v Psychological Resources, Inc, 147 Mich App 140, 144; 383 NW2d 144 (1985). The Grand Rapids Court further noted that the power to dismiss employees is inherent in the power to act as an "employer," granted to the commission by MCL 125.655(3). See, 235 Mich App at 402-403. The Court of Appeals concluded:

> Moreover, we may not abandon "the canon of common sense" when construing the ordinance at issue. See Marquis v Hartford Accident & Indemnity (After Remand), 444 Mich 638, 652, 513 NW2d 799 (1994). Accordingly, in light of the other powers granted to the Housing Commission, including the power to prescribe the duties of employees and the terms and conditions of employment, we find that the power to "employ" necessarily includes the power to dismiss. The MERC properly determined that the housing commission has both the power to hire and the power to fire its employees. (235 Mich App at 406-407).

The Grand Rapids Court noted that before the 1996 Amendments, MCL 125.655(3) provided that the housing commission "shall prescribe the duties of it officers and employees and, with the approval of the appointing authority [the mayor, see MCL 125.654(1)], may fix their compensation." After the 1996 Amendment, however, MCL 125.655(3) provides that "The commission may employ and fix the compensation of a director . . . and other employees as necessary." The Court concluded that "[c]learly, the amendments reflect a substantive change: in the absence of a city resolution to the contrary, housing commissions are now permitted to fix the compensation of their employees," and are therefore an employer. 235 Mich App at 404-405.

The Court of Appeals in the instant case, like the Grand Rapids Court which it cited, also found that the attributes of an employer necessary include the power to 1) select and engage the employee; 2) pay wages; 3) dismiss; and 4) control an employee's conduct. See, also, Michigan

---

Rapids Housing Commission all powers and duties permitted by law." (emphasis added). (Plaintiffs/Appellants' Appendix, 434a) .

Council 25, AFSCME v St. Clair Co., 136 Mich. App 721, 736 (1984), rev'd in part on other grounds 425 Mich. 204, 233 (1986).

II. THE COURT OF APPEALS CORRECTLY REVERSED THE TRIAL COURT IN FINDING THAT THE HOUSING ACT CONFERS THE POWER TO BE AN EMPLOYER ON HOUSING COMMISSIONS

MCL 125.654(5) provides that a DHC "***shall be a public body corporate***" (emphasis added). Consistent with this status, the Legislature conferred certain powers on housing commissions without any further requirement of local government action. These powers include those delineated in MCL 125.654(5), such as the power to sue and be sued, form and incorporate corporations and other business entities. Nevertheless, the City Council has reserved to itself powers that are inconsistent with the statute and with DHC's status as a "public body corporate."

Under Michigan law, the Legislature may confer corporate powers and capacity on public agencies that are established to accomplish a particular public purpose. When it does so, the agency becomes a "quasi-corporation" with the power to act independently.[13] Quasi-corporations are instrumentalities of the incorporating unit, but they also possess corporate powers – such as the power to sue or to enter into contracts in their own names – which are exercised independently of the incorporating unit.

Denying DHC important statutorily-granted powers – to act as an employer, set pay scales for its employees, enter into contracts, and establish its own procedural rules – is inconsistent with the Housing Act's express grant of power to the DHC as a "public body corporate" under MCL 125.654(5).[14]

---

[13] Advisory Opinion re Constitutionality of PA 1966, No. 346, 380 Mich 554, 568-71; 158 NW2d 416 (1968); Huron- Clinton Metropolitan Authority v Boards of Supervisors, 300 Mich 1, 20-22; 1 NW2d 430 (1942); Michigan v United States, 40 F3d 817, 818 (6th Cir 1994).

[14] The precise nature of the relationship between a quasi-corporation and its incorporating unit of government depends on the statute establishing the quasi-corporation or, as here pertinent, authorizing the establishment of the quasi-corporation. However, "[a]ll forms of corporations

A. As A Quasi-Corporation, The DHC Derives Its Power To Employ From Express Provisions Of The Housing Act, Regardless Of Whether That Power Is Set Forth In The Enumerated Powers Section Of The Act

The Trial Court erroneously relied on Plaintiffs/Appellants equally erroneous argument that the power to employ is not among the enumerated powers delegated to the DHC by the Housing Act (Plaintiffs/Appellants' Appendix 114a-115a) .

As a quasi-corporation, the DHC can possess and exercise three types of powers: 1) powers granted in express words; 2) powers necessarily or fairly implied in or incident to powers expressly granted; or 3) powers essential to the accomplishment of the declared objects and purpose of the corporation. Thus, the DHC is not strictly limited to those powers enumerated in the "enumerated powers" section of its enabling legislation. See generally, Huron-Clinton Metropolitan Authority v Attorney General, 146 Mich App 82 (1985) (power to lease fairly implied or incident to the power to sell, which was expressly granted by the legislature); City of Detroit v Public Utilities Com'n, 288 Mich 267 (1939) (power of the city to fix reasonable rates for gas implied by the express reservation of control of the streets to the city); Big Prairie Twp. v Bit Prairie Twp Grange No 935, 286 Mich 268 (1938) (power to lease part of township hall implied from the express granted power to purchase, hold, convey, alienate, and dispose of real and personal estate); Cornerstone Investments, Inc. v Cannon Tp.I, 231 Mich App 1, reversed, 459 Mich 508, on remand at 239 Mich App 98 (1999) (imposing professional fees incurred by planning boards in reviewing a development application is within the authority of the planning board or board of adjustment, even though not expressly delegated by statute). [15]

---

are separate, legal entities distinct from their owners-inhabitants or owners-stockholders and are created only by procedures provided by the state legislature." Steingold & Etter, 1 MICHIGAN MUNICIPAL LAW § 1.02, p 1-3 (emphasis added). Consequently, inherent in the term "public body corporate" is its separate and distinct legal status as an autonomous entity.

[15] See also, Advisory Opinion re Constitutionality of PA 1966, No. 346, 380 Mich. 554, 568.

As further discussed below, while the enumerated powers provision of the Housing Act does not expressly state the power to employ, it expressly imbues the DHC with additional powers necessary to carry out its functions. Consistent with this, provisions elsewhere in the Act expressly grant the power to employ.[16] Moreover, express provisions in the Act additionally grant the DHC powers and right necessarily attendant to acting in the capacity of employer, such as the right to fix compensation and prescribe duties. The Housing Act expressly grants complete managerial control to the DHC over the housing projects under its jurisdiction; accompanying that control, and necessarily incident to it, is the power to employ. Independent managerial direction over its workforce, from hire to termination and negotiating with unions representing its employees, are all necessary to the DHC's exercise that control.

B. The Enumerated Powers Provision Of The Housing Act Itself Grants The DHC Powers Beyond Those Listed And Necessary To Fulfill Its Functions

First, contrary to the suggestions of Plaintiffs/Appellants, the extension of DHC's managerial powers to the independent power to employ is provided for in Section 7 (g) of the enumerated powers section of the Housing Act, which provides that a housing commission shall:

> . . . have such other powers relating to said housing facilities project as may be prescribed by ordinance or resolution of the governing body of the city or village *or as may be necessary to carry out the purposes of the Act.*

Under the above formulation, the DHC's powers are not limited to those powers enumerated in Section 7 – nor to those to which City Council may wish to limit the DHC. Rather, the DHC's powers "shall" include such other powers as may be necessary to carry out the purposes of the Act. And, while subparagraph (g) provides that the City Council may prescribe *other* powers to the Detroit Housing Commission. It does not, as City Council would

[16] A power may be found in a legislative enactment even where it is not expressly delegated. Home Owners' Loan Corp. v City of Detroit, 292 Mich. 511, 515 (1940).

have it here, give that body the authority to abridge, dilute, or appropriate powers given the DHC by the Housing Act.

This is particularly the case here, where, pursuant to Section 12 of the Housing Act, the DHC

> ... shall have complete control of the entire housing project or projects including the construction, maintenance and operation as fully and completely as if said commission represented private owners. MCL 125.662.

Section 12 leaves no doubt that it is the legislature's intent to grant housing commissions independent authority to manage their housing operations without micro-management, day-today oversight, or other intrusion by the municipality. What can be more basic to the definition of day-to-day, managerial control over an enterprise if not control and direction over its workforce?

In Huron-Clinton Metropolitan Authority, supra, the metropolitan district sought a declaratory judgment that it had the authority to lease a parcel of land within its "metro park" system. Although the enabling statute expressly granted the metropolitan district the power to sell land, the statute made no mention of the power to lease. Nonetheless, the Court held that the power to lease was implied from the legislative grant of the power to sell land. In it's reasoning, the court stated that the rights, powers, privileges, and immunities of the broad grant of power to convey the entire bundle of rights of a fee necessarily included the lesser power to lease. Huron-Clinton, 146 Mich. App at 82-84.

The Huron-Clinton Court noted that the district was formed for the purpose of "planning, promoting, and/or for acquiring, constructing, owning, developing, maintaining and operating...parks."[17] Though the statutory purpose contained no express mention of the power

[17] Huron-Clinton, 146 Mich. App at 81 (citing MCL 119.51; MSA 5.2148(1)).

to lease, a broad reading of the statute was necessary to enable the district to achieve it's intended purpose.

Similarly, the DHC was created to "purchase, acquire, construct, maintain, operate, improve, extend, and repair housing facilities;...and for any such purposes...to create a commission with power to effectuate said purposes."[18] It is clear that the intent of the legislature in enacting the Housing Act was to create an administrative body responsible for overseeing public housing within governing municipalities. Consistent with this purpose, the ability to function properly as an administrative body necessarily includes the power to hire and employ workers. Here, that power need not be implied, for it is expressly set out in the Housing Act.

C. The Power To Employ Is Expressly Set Forth In The Legislative Enactment

In the instant case, the power to employ is expressly stated in the Housing Act.[19] MCL 125.654(3) provides that "The commission may employ and fix the compensation of . . . employees as necessary," and further provides that "The Commission shall prescribe the duties of its officers and employees," as well as "employ engineers, architects, attorneys, accountants, and other professional consultants when necessary." Thus, because the power to employ and fix compensation is contained "somewhere" in the enabling legislation, the power to be an employer need not be expressly delegated.[20]

D. The Enumerated Powers Provision Of The Housing Act Does Not Exclude The Power To Employ

The Huron-Clinton court rejected the argument that "express mention in a statute of one thing implies the exclusion of similar things."[21] Instead, the Court chose to follow the

---

[18] P.A. 1933, Ex. Sess., No. 18 (1934)
[19] See generally, Home Owners', supra, note 5.
[20] Id.
[21] Huron-Clinton, 146 Mich. App at 85.

established rule that statutes should be construed to prevent illogical or absurd results.[22] This Court should similarly avoid a construction of the Housing Act that would produce an illogical result. The Huron-Clinton court noted that it would be illogical for the statute to grant the power to sell, but not have intended to include the lesser power to lease. Likewise, it would be illogical to find that, while the Commission has the power to "fix compensation" and "employ" certain persons, it does not have the power to be an employer of those same persons.

III. THE COURT OF APPEALS CORRECTLY HELD THAT THE CITY COUNCIL MAY NOT REQUIRE THE MAYOR TO MAKE THE STATUTORY RECOMMENDATION REGARDING THE SALARY AND CLASSIFICATION OF DHC EMPLOYEES

The Court of Appeals in this case also does not conflict with Grand Rapids with respect to the Grand Rapids Court's caveat that housing commissions have the right under the Act to set their own employees' compensation and classifications "in the absence of a city resolution to the contrary." 235 Mich App 404-405. To reverse the Court of Appeals here would read into Grand Rapids what is not in that case and what is not in the Act, namely, that a local *legislative* body can contravene the Act and thwart the independence of the DHC merely by passing the kinds of resolutions the Detroit City Council passed here. As tacitly noted by the Court of Appeals when it distinguished Grand Rapids on its history, the issue of how a "city resolution to the contrary" may be arrived at, was not before the Court in Grand Rapids.

Under the Housing Act, the City Council ***cannot*** by itself fix the compensation or classifications of DHC employees, as it has done through the Ordinances at issue here. Rather, pursuant to MCL 125.655(3), City Council may adopt pay scales and classifications for DHC employees ***only*** upon the recommendation of the Mayor:

> ***Upon the recommendation*** of the appointing authority [the Mayor is the "appointing authority", see MCL 125.654(1)], the governing body of an

[22] Id.

> incorporating unit [the City Council] ***may*** adopt a resolution either conditioning the establishment of any compensation of an officer or employee of a commission upon the approval of the governing body or establishing compensation ranges and classifications to be used by a commission in fixing the compensation of its officers and employees. (Emphasis added.)

Here, Mayor Archer not only ***did not*** make the recommendation required by the Housing Act for City Council to intervene in the DHC's employer status, but has expressly taken the opposite course.

The September 26, 2001 Ordinance invalidated by the Court of Appeals *compels* the Mayor to do what is merely discretionary under the Housing Act. It makes it mandatory for the Mayor to recommend that the City Council adopt pay scales and classifications for DHC employees, effectively permanently mandating that City Council, not the DHC, sets the pay scales for DHC employees:

> (5) The Mayor ***shall*** recommend to the City Council either a compensation schedule or compensation ranges and classifications for the [Detroit Housing] Commission officers and employees.
>
> (6) The city council ***shall adopt*** a resolution either conditioning the establishment of any compensation of an officer or employee of a Commission upon the approval of the city council or establishing compensation ranges and classifications to be used by the Commission in fixing the compensation of its officers and employees. (Emphasis added.) (Plaintiffs/Appellants' Appendix, 348a) ,

There is nothing in the Grand Rapids decision that addresses how a "resolution to the contrary" may validly be adopted by a municipality. The Court did not engage in (because it did not need to) an analysis of how and when a Mayoral recommendation may trigger City Council's authority to fix the compensation and classifications of DHC employees. The Court was not confronted with a fact scenario such as here, where the City Council has essentially engaged in an end-run around the express provisions of the MCL 125.655(3) to usurp the authority granted to the Mayor by requiring the Mayor to make the recommendation which triggers its authority.

There is nothing in Grand Rapids which supports the use of a City Council fiat to mandate a mayoral recommendation under the Housing Act.

The Housing Act does ***not*** empower the City Council to force the Mayor to recommend anything, but leaves that entirely to the Mayor's discretion. By its Ordinance, the City Council sets on its head the Housing Act provision that City Council can only act upon the Mayor's recommendation, and confers on itself powers and authority expressly available under the Housing Act only upon satisfaction of a condition precedent – the Mayor's recommendation. The Trial Court's Order allows the Ordinance to turn the Housing Act inside out and eliminate or render meaningless the express statutory provision that empowers the Mayor to recommend – or not recommend.

IV. THE COURT OF APPEALS CORRECTLY HELD THAT CITY COUNCIL MAY NOT REQUIRE THAT DHC EMPLOYEES REMAIN IN THE CIVIL SERVICE

MCL 125.654(3) provides that "The commission may employ and fix the compensation of . . . employees as necessary." That provision further provides that "The Commission shall prescribe the duties of its officers and employees." The Ordinances, however, require that DHC employees remain in the City's Civil Service system:

> All [DHC] employees shall be members of either the classified service or the unclassified service as is provided under Section 6-517 of the Charter of the City of Detroit, including but not limited to pension benefits.

Detroit City Code § 14-5-3(7) (as amended by Ordinance, Plaintiffs/Appellants' Appendix, 349a)) This Ordinance makes the City, not DHC, the employer of all DHC employees and is contrary to the explicit terms of MCL 125.654(3).

By keeping DHC employees under the Civil Service System, the right to recruit hire, test, assign, classify, promote, discipline, pay, terminate, and set job specifications or duties for DHC employees is left solely and entirely within the City's Human Resources Department, which

operates under the aegis of the Detroit Civil Service Commission. (Plaintiffs/Appellants' Appendix, 367a, at 393a-396a, being City Charter Chapt. 5, §§ 6-501 - 6-519, pp. 27 - 30). Under these Charter provisions, the Human Resources Department has the exclusive right to: negotiate collective bargaining agreements (City Charter Chapt. 5, §§ 6-508); prescribe titles and duties for positions (City Charter Chapt. 5, §§ 6-509); test, recruit and hire new employees (City Charter Chapt. 5, §§ 6-510 - 6-51); establish policies for promotion (City Charter Chapt. 5, §§ 6-512); hear and settle employee grievances (City Charter Chapt. 5, §§ 6-513); control payroll (City Charter Chapt. 5, §§ 6-515).

As the Court of Appeals correctly found, Detroit City Code §14-5-3(7) is entirely in conflict with MCL 125.654(3), and cannot be harmonized. The statute mandates that the DHC prescribe the duties of its employees; the Ordinance simply completely takes that statutory power away from the DHC.

V. PRIOR BUDGET ACTIONS DO NOT OPERATE TO ESTOP THE EXECUTIVE BRANCH FROM GIVING EFFECT TO THE HOUSING ACT

Plaintiffs/Appellants argues that the Executive Branch of the City of Detroit is estopped from relying on the Housing Act to grant independent employer status to the DHC because,. Since 1996, Mayor Archer has submitted budgets including the DHC employees in City employment. AFSCME argues that because the City did not immediately sever the employment relationship with DHC employees upon passage of the 1996 Amendments, it should be prohibited from doing so now. As the MOA makes clear, however, the DHC was not in a position to immediately separate at that time, and needed time and processes to develop its own systems. The fact that it took the City another four years to develop the DHC to the point where it could become functionally separate is more a testament to the reasons for HUD's assessment that public housing commissions should not be wholly owned creatures of municipalities. With

the DHC mired in the City's processes, problems, inefficiencies, bureaucracy and political in-fighting, the four year delay from the MOA to the Mayor's attempt to effectuate the intent of the Housing Act is entirely explicable, and an argument for, rather than against proceeding with separation.

Relatedly, Plaintiffs/Appellants contends that the Court of Appeals both ignored the record and erred in its recitation of the facts because it stated that the Mayor's budget submissions were "lump sum" rather than detailing the wages and classifications of DHC employees. Whether the Court of Appeals got this detail right or wrong is irrelevant to the legal analysis of whether the Housing Act makes the DHC an independent employer, because that question depends on the intent of the legislature, not on the conduct of the parties.[23] Similarly, the question of whether the DHC can now legally commence functional operation as a separate employer is determined by the meaning and intent of the Housing Act, not any prior actions by Mayor Archer or City Council.

Plaintiffs/Appellants also argue, in a similar vein, that Mayor Archer, in his communication to City Council on July 17, 2001(Defendants/Appellees Appendix, 25b) concedes that City Council action is necessary *under the Act* to achieve independent employer status for the DHC. That is simply not the case. Rather, the Mayor's proposals to amend the City's Executive Organization plan and Housing Ordinance were intended to bring the City's legal documents into conformity with the Housing Act. Nowhere does the Mayor suggest that

[23] Even assuming *arguendo* that the Court of Appeals mistated a fact, this court can reach the same conclusion and affirm, eve if on different grounds. See, e.g., People v Carpenter 464 Mich 223, 241; 627 NW2d 276 (2001) (affirming decision of the Court of Appeals on alternative grounds); Messenger v Ingham Co Prosecutor, 232 Mich App 633, 643; 591 NW2d 393 (1998) ("When this Court concludes that a trial court has reached the correct result, this Court will affirm even if it does so under alternative reasoning."); Morosini v Citizens Ins Co of America, 224 Mich App 70, 86; 568 NW2d 346 (1997) ("we nonetheless affirm because the circuit court reached the right result, albeit for the wrong reason.")

City Council can obstruct or avoid the effect of the Act by legislative action – or inaction. (Plaintiff/Appellant's Appendix, 327-339a).

The Housing Act was amended to provide that housing commissions could operate as independent entities. To implement the Act with respect to the DHC, Mayor Archer, in 1996, embarked on a campaign to prepare the Detroit Housing Commission and the City for separation, including working with HUD, City Council and the Unions representing DHC employees to achieve a smooth transition. The record below demonstrates at length the numerous steps taken by the Mayor in an attempt to work with City Council and the Unions, from the MOA with HUD, to the negotiations with Union, proposed amendments to have the City's Charter and Code reflect the state of the law, and, through the intergovernmental agreement, easing the transition for DHC employees by keeping them in the City's health and pension plans.[24]

During that time, and during this litigation, until the necessary elements were in place to achieve functional separation (legal separation was provided by the Housing Act), Mayor Archer had no choice but to prepare budgets that included the DHC to keep it operating and keep its employees paid and their benefits provided for. Plaintiffs/Appellants are now using the Mayor's years of attempted cooperation against Defendants by spinning them as an "admission" that the

---

[24] Moreover, the Trial Court erred significantly in finding that the that the City of Detroit, by virtue of a Memorandum Of Agreement entered into in 1996 with HUD ("MOA") and approved by City Council, determined to retain City employees assigned to the Detroit Housing Commission as City of Detroit employees. The Court found that this MOA constituted the mayoral recommendation "trigger" under MCL 125.655, and therefore bound the City in perpetuity to maintain an employer relationship with employees assigned to the DHC. (Plaintiffs/Appellants' Appendix, 109a, at 118a-120a). The Trial Court's reliance on the MOA, however, is completely misplaced, since the MOA, but its terms, expired on June 30, 1997. The MOA is no longer of any effect, and has not been since its expiration date, and cannot be the basis for a holding that the Mayor, through the MOA, has made the recommendation provided for in MCL 125.655(3) and thus taken the right of employer away from the DHC.

Detroit Housing Commission *can never be* an independent employer without approval by City Council.

Even if the City's prior actions could be interpreted as such an admission, it is of no legal consequence here. The Housing Act makes the DHC an independent employer. The law says what it says and the City cannot now be estopped from complying with the Housing Act. Generally, municipalities cannot be estopped from enforcing the law. See, generally, Fass v City of Highland Park, 326 Mich 19, 28-29; 39 NW2d 336 (1949) (noting that "a municipality is not precluded from enforcing a zoning [ordinance because] one . . . of its officers . . . has exceeded his authority by issuing a permit contravening the terms of such [ordinance]; and this notwithstanding that the holder of the permit has proceeded thereunder to his detriment . . . ."); Walker's Amusements, Inc v City of Lathrup Village, 100 Mich App 36, 43 n4; 298 NW2d 878 (1980) ("even if defendant city was itself violating an ordinance, that fact would not serve to estop the city from enforcing the zoning ordinance against others."); Cross v Whedon, 93 Mich App 13, 19; 285 NW2d 780 (1979) ("a municipal body is not estopped by the unauthorized or illegal acts of its officers").

Thus, even assuming *arguendo* that the Archer Administration did not expressly take the position that the Housing Act made the DHC an independent employer as a matter of law in 1996, an argument should not be entertained here that it is now bound by either a prior failure to advance such an interpretation or a prior wrong interpretation. Plaintiffs/Appellants cited to the Court of Appeals no case law – indeed none exists - for the principle that a governmental body can be estopped from implementing, or be permitted to ignore or avoid the effect of, a statute because it failed to properly interpret and apply that statute in the first instance. Nor does AFSCME cite precedent for its present Application. It is well settled that Courts will not search

for authority to sustain or reject a party's position. Head v Phillips Camper Sales & Rental, Inc, 234 Mich App 94, 116; 593 NW2d 595 (1999). The failure to cite legal authority for an issue waives that issue for appellate review. Gubin v Lodisev, 197 Mich App 84, 92; 494 NW2d 782 (1992). Plaintiffs/Appellants have effectively abandoned this issue by failing to cite any supporting legal authority. Head, supra, 234 Mich App at 116.[25]

VI. THE EFFECT OF REVERSION TO THE PRIOR HOUSING ORDINANCE IF THIS COURT UPHOLDS THE COURT OF APPEALS IS IRRELEVANT THE ISSUES PRESENTED BELOW AND ON APPEAL

AFSCME argues that this Court should reverse the Court of Appeals' ruling because if the disputed ordinances are declared invalid, the status quo will revert to the prior housing ordinance, which still maintains DHC-assigned employees as City employees. However, to the extent that the prior Housing Ordinance is in conflict with the Housing Act, it too is invalid and of no effect. It is no argument to say that the current invalid ordinances should be upheld because otherwise the situation will revert to a set of prior invalid ordinances. The fact that a City Ordinance conflicts with a statute does not prevent the operation of the statute. Here, again, Plaintiffs/Appellants cites no authority for its proposition and this argument should not receive any consideration by this Court.

[25] If the City is to be estopped by prior conduct, then so is AFSCME. As the Affidavits of City Labor Relations Director Roger Cheek and DHC Director John Nelson demonstrate, AFSCME has been negotiating with the City and the DHC since late 1995 regarding the separation of the DHC and the severance of the City's employment relationship with City employees assigned to the DHC. *It was only in 2001 that AFSCME first took the position that the DHC could not separate.* (Defendants/Appellees' Appendix, Vol 1, 170b and 276b). In fact, AFSCME's unfair labor practice charge against the City and the DHC (as well as its pleading below) claim that the DHC had an obligation to bargain with it over a new collective bargaining agreement to govern post separation employment. Such a bargaining obligation would only arise if the DHC were a separate employer, which AFSCME clearly considered it to be.

VII. THE ORDINANCE REQUIRING THE MAYOR TO MAKE A SALARY RECOMMENDATION VIOLATES THE ALLOCATION OF AUTHORITY BETWEEN THE EXECUTIVE AND LEGISLATIVE BRANCHES IN THE CITY CHARTER

Plaintiffs/Appellants argues that the City Charter should be given effect, but ignores the fact that City Council's actions here fly completely in the face of other fundamental tenets of the Charter which the newly minted Ordinances directly violate. The City Charter does not empower the Council to compel the Mayor to make the recommendations required by the Housing Act regarding DHC employee compensation and classifications. To the extent City Council has any "oversight" powers over the executive branch under the Charter, it is limited to investigation and the power to subpoena witnesses or evidence, Detroit City Charter §§ 4-109, 4-110.[26] (Plaintiffs/Appellants' Appendix, 381a). The Ordinances at issue here not only violate the Housing Act, but exceed the Council's powers under the Charter and are entirely inconsistent with the limitation on the City Council's power over the executive branch as set forth in the Charter at § 4-113:

> Sec 4-113. Prohibition on interference in administration
> Except for purposes of inquiries and investigations, the city council or its members shall deal with city officers and employees who are subject to the direction and supervision of the mayor solely through the mayor, and neither the city council nor its members shall give orders to any such officer or employee, either publicly or privately. (Plaintiffs/Appellants' Appendix, 381a).

See also, Detroit City Charter §§ 4-101 and 5-102 (Plaintiffs/Appellants' Appendix, 379a and 387a).

The State legislature has delineated the role the City Council is intended to play with respect to the DHC. The Housing Act does not ***require*** the Mayor to recommend that City Council adopt pay ranges or classifications for DHC employees. Neither the Housing Act nor the

Detroit City Charter empowers City Council to compel the Mayor to make such a recommendation.

The allocation of power and authority between the legislative and executive branch in the Detroit City Charter has been recognized and given effect by this Court. Detroit Fire Fighters Ass'n v City of Detroit, 449 Mich 629, 640; 537 NW2d 436 (1995); Detroit City Council v Stecher, 430 Mich 74; 421 NW2d 544 (1988).

The Housing Act ***does not*** empower City Council to adopt pay ranges or classifications for DHC employees if the Mayor does not recommend it do so. The Ordinances invalidated by the Court of Appeals circumvent the discretionary authority of the Mayor under the Housing Act and render meaningless the powers and duties granted the Mayor under the Housing Act and the Charter.

VIII. THE CITY'S HOME RULE POWERS DO NOT ALLOW IT TO ADOPT ORDINANCES THAT CONTRAVENE THE HOUSING FACILITIES ACT

Contrary to Plaintiff/Appellant's argument, the City's home rule powers do not allow the City Council to adopt Ordinances that supersede the 1996 Amendments to the Housing Facilities Act. The City of Detroit is a home rule city. See Detroit Fire Fighters Ass'n v City of Detroit, 449 Mich 629, 637; 537 NW2d 436 (1995); Wayne Co Chief Executive v Mayor of City of Detroit, 211 Mich App 243, 245; 535 NW2d 199 (1995). As a home rule city, certain powers are left to the City of Detroit under the Michigan Constitution:

> Under general laws the electors of each city and village shall have the power and authority to frame, adopt and amend its charter, and to amend an existing charter of the city or village heretofore granted or enacted by the legislature for the government of the city or village. ***Each such city and village shall have power to adopt resolutions and ordinances relating to its municipal concerns, property and government, subject to the constitution and law.*** No enumeration of powers

---

[26] Obviously, the Council may vote to override a mayoral veto of a Council Resolution or Ordinance, Detroit City Code § 4-119. This is not, however, a grant of authority to compel the mayor to act as attempted here.

> granted to cities and villages in this constitution shall limit or restrict the general grant of authority conferred by this section. [Const 1963, art 7, § 22 (emphasis added)].

However, as this provision specifically provides, ordinances are "subject to the constitution and law," *i.e.*, both the Michigan Constitution and state statutes.

The Michigan Legislature set out the powers of home rule municipalities in the Home Rule Cities Act, MCL 117.1, et seq. The Michigan Supreme Court has opined that "home rule cities enjoy not only those powers specifically granted, but they may also exercise all powers *not expressly denied.*" City of Detroit v Walker, 445 Mich 682, 690; 520 NW2d 135 (1994) (emphasis added). More recently, in Rental Property Owners Association of Kent County v City of Grand Rapids, 455 Mich 246, 254; 566 NW2d 514 (1997), the Supreme Court stated: "The home rule cities act is intended to give cities a large measure of home rule. It grants general rights and powers *subject to enumerated restrictions.*" (Emphasis added.)

A. The Ordinances At Issue Encroach On An Area Regulated By State Law

In addressing conflicts between local charter or ordinance provisions and state law, the Michigan courts have sometimes discussed concepts of "purely local character" or "matters strictly municipal" rather than of "statewide concern." Brimmer v Village of Elk Rapids, 365 Mich 6; 112 NW2d 222; Police & Firemen v City of Detroit, 143 Mich App 644; 372 NW2d 643 (1985). In such cases, the existence of a state statute prescribing or limiting actions of a local unit makes the matter one of statewide, rather than local, concern.[27] In enacting and amending

[27] Thus, the Michigan Courts have held that State regulation of a wide variety of subjects created matters of State rather than local concern. See, *e.g.*, Midland Township v State Boundary Commission, 401 Mich 641; 259 NW2d 326 (1977) (municipal boundaries); Richards v City of Pontiac, 305 Mich 666; 9 NW2d 885 (1943) (trailer parks); Noey v City of Saginaw, 271 Mich 595; 261 NW 88 (1935) (liquor sales); Grand Haven v Grocer's Cooperative Dairy Co., 330 Mich 694; 48 NW2d 362 (1951) (milk pasteurization); Attorney General ex rel. Lennane v City of Detroit, 225 Mich 631; 196 NW 391 (1923) (municipal employee wages). These matters are of no greater State interest than the elimination of substandard housing and slum conditions.

the Housing Act, the Legislature has demonstrated that housing is a statewide concern. Plaintiffs/Appellees cannot rely upon home rule principles to argue that the Ordinances should prevail over a state statute.

As indicated above, a municipal ordinance may be preempted where a statute occupies the field of regulation that the municipality seeks to enter. People v Llewellyn, 401 Mich 314, 322 (1977). A statutory scheme occupies a field of regulation where one or more of the following criteria are met: (1) the statute gives the state exclusive regulatory power; (2) preemption may be implied from legislative history; (3) the statute is pervasive in its coverage of the subject area; or, (4) the subject matter of the statute demands exclusive state regulation to achieve the uniformity necessary to the state's interest. Llewellyn, 401 Mich at 323-325. None of the guidelines are controlling and a statute does not need to meet all or even a majority of the guidelines before an ordinance is preempted. See generally, Llewellyn, supra, where the court determined that the ordinance was preempted even though only two of the four factors were construed in the state's favor. Llewellyn, 401 Mich at 326.

In Walsh v City of River Rouge, 385 Mich 623 (1971), the court extensively considered the question of legislative intent to preempt. The intent of the statute in Walsh was to "invest the governor with sufficiently broad power...to provide adequate control over persons and conditions during such periods of impending or actual public crisis or disaster." Walsh, 385 Mich at 635. The statute was also to be "broadly construed" to effectuate it's purpose. The court concluded that the decision of the legislature to create the statute, delineate the powers, and broadly construe the statute suggested an intent to regulate the field. Id. at 640.

See, e.g., People ex rel Stokes v Newton, 106 Colo. 61, 101 P2d 21 (1940) (statute granting powers to Denver Housing Authority superseded home rule; "acts of this character are of public concern and a proper exercise of the police power under state sovereignty").

The Housing Act may be similarly interpreted. The clear legislative intent was to empower housing commissions to be independent entities, including as employers. Grand Rapids, supra, at 235 Mich App 406. Explicitly, the intent of the Act is to authorize "every...commission...to do any and all things necessary or desirable to secure the financial aid or cooperation...in the constructing, maintaining, operating, improving...of housing facilities." MCLA § 125.696. Moreover, the Housing Act is to be liberally construed. MCLA § 125.690. Drawing on Walsh, The decision to create the Housing Act, confer authority on the Commissions, and broadly construe the Act to effectuate it's intended purposes, suggests a legislative intent to regulate the field.

B. Preemption May be Implied from the Pervasiveness of the Act

While the pervasiveness of the statute alone is not sufficient to infer preemption, it is a factor that should be considered as evidence of preemption. Enactment of a comprehensive scheme that is extensive in scope shows an intention by the legislature to adopt a general scheme for the regulation of the subject. Llewellyn, 401 Mich at 324; Township of Cascade, 118 Mich. App. 580 (1982) (statute providing for regulation of waste management held comprehensive and pervasive where the statute provided for permit requirements, duties, and management, operation and maintenance procedures). The Housing Act is equally as comprehensive. The Act provides, for example, for the purchasing, acquisition, construction, maintenance, operation, improvement, extension, and repair of detrimental housing conditions. MCLA § 125.652, and thus involves a detailed scheme to provide for efficient and effective management and operation of public housing. The comprehensiveness of the Housing Act indicates that the Legislature preempted the field.

The conclusion of pervasiveness is further supported by the provisions in the Act

intended to strike a balance between local interest and the state's need for a uniform system of the administration and operation of housing commissions. In Township of Cascade, the statute required that one member of the approval board be a resident of the municipality in which the facility was to be located. Id. Here, one member of the Commission must be a tenant of public or subsidized housing. MCLA § 125.654(2). This is sufficient to recognize the state's concern for the intended beneficiaries of the legislation. To hold otherwise would "completely upset the balance between state and local interests since a municipality could veto the state's decision...even though the state took the municipality's concerns into consideration." Township of Cascade. Thus, the inclusion of beneficiaries' input further indicates that the Legislature has preempted the field of public housing. Id. In light of the clear legislative intent to sever the relationship between housing commissions and the cities they serve, the state must have recognized that uniformity in state housing commission administration laws was necessary to serve the state's interest in relieving it's housing crisis.

IX. THE COURT OF APPEALS HAD JURISDICTION OVER COUNT I OF AFSCME's AMENDED COMPLAINT. IN ANY CASE, AFSCME's CLAIM UNDER COUNT I OF ITS COMPLAINT IS NOW MOOT

A. The Court Of Appeals Properly Took Jurisdiction

Plaintiff/Appellant's contention that the Michigan Court of Appeals proceeded without jurisdiction over Count I of its Amended Complaint is without merit.[28] In addressing this claim, the Michigan Court of Appeals held:

[28] Count I involves a request for injunctive relief under Section 16(h) of the Public Employment Relations Act ("PERA"), MCL 423.201 *et seq*, which has its genesis in the case of Van Buren Public School District v Wayne Circuit Judge, 61 Mich App 6 (1975), in which the Court held that individuals pursuing an unfair labor practice before MERC could obtain injunctive relief pending the outcome of MERC procedures, where such relief was warranted under traditional principles of equity. Id, at 61 Mich App 15-16. The purpose of a 16(h) injunction is a limited one – namely to preserve the status quo of the subject matter of the unfair labor practice until MERC has ruled.

> In Count I of its first amended complaint, AFSCME requested the issuance of a preliminary injunction to keep the status quo while it litigated an unfair labor grievance in the Michigan Employment Relations Commission. In both the January 2002 and the May 2002 orders, the circuit court issued a preliminary injunction in AFSCME's favor. The orders in question disposed of the claim for a preliminary injunction as well as adjudicating the rights and liabilities of the parties concerning this cause of action. If the injunction was not as broad as AFSCME desired, that issue goes to the validity of the circuit court's actions, not the jurisdiction of this Court.

(Court of Appeals opinion, p.2).

AFSCME's amended complaint contained two counts. In Paragraph 32 of Count I, AFSCME lists five separately-lettered paragraphs of the relief it requests. Then, in the "WHEREFORE" clause under Count II, AFSCME again lists five separately-lettered paragraphs of the relief it requests. The relief requested under Count I *is identical* to the relief requested under Count II. The only difference between Count I and Count II is that Count I requested a preliminary injunction whereas Count II requested a permanent injunction. The trial court granted AFSCME the permanent injunctive relief it requested in Count II. Consequently, any claim by AFSCME that Count I has not been fully adjudicated is disingenuous given that Count I requested the exact same relief as Count II and that Count II has been fully resolved.

The trial court's orders of January 25 and May 21, 2002, bear out that the relief sought in Count I of AFSCME's amended complaint was fully and finally adjudicated by the Court. In Count I of their amended complaint, AFSCME asked the Court to restraint and enjoin Defendants from several things, including: (1) making any unilateral changes to AFSCME-represented employees terms and conditions of employment; (2) implementing anything that would cause AFSCME-represented employees to cease being City of Detroit employees; and (3) depriving AFSCME-represented employees of their pension and other benefit plans under the classified civil service system.

In its order of May 21, 2002, the trial court entered an order that did not just grant, *but exceeded* the relief requested by AFSCME in its amended complaint. Specifically, the trial court ordered:

> a. Absent legislative action pursuant to the Detroit City Charter, Defendants City of Detroit and the Detroit Housing Commission **shall recognize and treat all persons employed by and hired to work at the Detroit Housing Commission as employees of the City of Detroit;**
>
> b. Absent legislative action pursuant to the Detroit City Charter, Defendants City of Detroit and the Detroit Housing Commission **shall recognize and treat all persons employed by and hired to work at the Detroit Housing Commission as participants in the City of Detroit's pension, health and benefit plans pursuant to the terms of those plans.**

AFSCME received more than the relief it sought. AFSCME sought a preliminary injunction from the trial court in Count I of its amended complaint. Pursuant to Section 16(h) of the Public Employment Relations Act, a court can enter a preliminary injunction until such time as a decision is reached by the Michigan Employment Relations Commission. MCL 423.216(h). In the present case, the trial court awarded more than an injunction pending the outcome of administrative proceedings; the trial court *permanently* required that all persons working for the DHC remain employees of the City of Detroit and required them to continue to remain in the City of Detroit's health, benefit and pension plans. The trial court gave everything and more to AFSCME.[29]

---

[29] AFSCME's contention that the Court of Appeals' taking jurisdiction over this appeal left it without a remedy is disingenuous. Before the Trial Court, counsel for AFSCME volunteered that the Trial Court's injunctive relief mooted Count I. In his Bench ruling on November 15, 2001, Judge Ziolkowski ruled preliminarily that the City cannot sever its employment relationship with DHC employees. The Trial Court did not rule on the 16(h) issue, and counsel for AFSCME never asked the court to do so.[29] Rather, during that proceeding, counsel stated several times that the Judge's relief on the Declaratory Judgment Count of AFSCME's Complaint mooted the request for an injunction under PERA 16(h), after the issue was expressly raised by counsel for Defendants/Appellants:

MR. WILLEMS: . . . I think you indicated that this is on the severance of the employer relationship under the statute. But where does that leave us with respect to the 16h injunction?

Pursuant to MCR 7.202(7)(a)(i), a final order is defined as "the first judgment or order that disposes of all the claims and adjudicates the rights and liabilities of all the parties, including such an order entered after reversal of an earlier final judgment or order . . . ." Under this definition, the trial court's order of May 21, 2002 was a final order. As the above discussion has shown, Count I of AFSCME's amended complaint was fully adjudicated by this order. There was nothing left for the trial court to decide.[30]

Finally, AFSCME failed to cite any authority for this argument to the Court of Appeals and fails to do so here. AFSCME has therefore has effectively abandoned this issue and this Court should treat this argument as waived. Head v Phillips Camper Sales & Rental, supra; Gubin v Lodisev, supra.

Are you not ruling on that today at all? We have a MERC hearing scheduled December 18. All that MERC is going to do, if indeed, if the AFSCME prevails is order us to bargain. We are prepared to bargain now. My clients are here – they have their calendars – they want to schedule dates, let's do it. We'll put it in an order. It seems to me that that part of the case really needs to be decided now and it needs to be decided in favor of bargaining rather than continuing hearings and injunctions and things of that nature.

MS. KLASS: With respect to the section 16h, as I said earlier, that may be moot.

THE COURT: Well, I agree. That's what I am thinking, that may be moot.

MS. KLASS: Yes.

MR. WILLEMS: I am not sure what you mean by that. Do you mean that...

THE COURT: I ruled that you are the employer. What are you bargaining? You're bargaining on what if there's a contract that ought to be bargained on that's up for renewal or something then you bargain on it. Otherwise you are not bargaining on severability of employees because that's moot. I ruled that you can't do it. So that's done. So I don't know what you arguing about. (Plaintiffs/Appellants' Appendix 44a, at 63a-64a).

[30] Further, Plaintiffs/Appellants contention that the Court of Appeals did not have jurisdiction over this appeal pursuant to MCL 7.203(B) is moot because the Court of Appeals accepted jurisdiction. Even if the Court of Appeal did not have jurisdiction from a final order, which it did, it could have exercised its jurisdiction over the appeal under MCR 7.203(B)(1). This rule provides that the Court of Appeals "may grant leave to appeal from . . . a judgment or order of the circuit court . . . which is not a final judgment appealable of right." Such an appeal by leave would have been appropriate here because all claims against the City had been resolved. Further, the Court of Appeals could have treated the appeal as an application for leave and heard the appeal. See Guzowski v Detroit Racing Ass'n, Inc, 130 Mich App 322, 326; 343 NW2d 536 (1983); Tenney v Springer, 121 Mich App 47, 51; 328 NW2d 566 (1982).

B. AFSCME's Claim Under Count I Of Its Complaint Is Moot

This Court has defined moot cases as those that present "'nothing but abstract questions of law which do not rest upon existing facts or rights.'" School Dist of City of East Grand Rapids, Kent Co v Kent Co Tax Allocation Bd, 415 Mich 381, 390; 330 NW2d 7 (1982), quoting Gildemeister v Lindsay, 212 Mich 299, 302; 180 NW 633 (1920). An issue is considered moot when "an event has occurred that renders it impossible for the court, if it should decide in favor of the party, to grant relief." City of Jackson v Thompson-McCully Co, LLC 239 Mich App 482, 493; 608 NW2d 531 (2000), citing Michigan Nat'l Bank v St Paul Fire & Marine Ins Co, 223 Mich App 19, 21; 566 NW2d 7 (1997).[31]

The issues raised by AFSCME relating to its claim for an injunction under PERA are moot. There is no relief this Court can grant AFSCME. As this Court has recognized, the Michigan Employment Relations Commission ("MERC") "alone has jurisdiction and administrative expertise to entertain and reconcile competing allegations of unfair labor practices and misconduct under the PERA." Rockwell v Board of Ed of School Dist of Crestwood, 393 Mich 616, 630; 227 NW2d 736 (1975). However, MCL 423.216(h) allows a circuit court to enter an injunction until MERC has an opportunity to consider the unfair labor practice charges before it.

In the present case, MERC has issued its final ruling, dismissing the majority of AFSCME's charges. Because MERC has entered its ruling, there is no relief that this Court could grant AFSCME. Even if this Court or the Court of Appeals remanded the matter to the circuit court, the need for injunctive relief has passed. Consequently, the issue regarding

AFSCME's claim for injunctive relief is now moot.

CONCLUSION AND RELIEF REQUESTED

In light of the above arguments and authorities, Defendants/Appellees request that this Court affirm the Court of Appeals.

Respectfully submitted,

MILLER, CANFIELD, PADDOCK AND STONE, P.L.C.
Leonard D. Givens (P14028)
John H. Willems (P31861)

By: _____
John H. Willems
Attorneys for Plaintiff
150 West Jefferson, Suite 2500
Detroit, MI 48226
(313) 963-6420

Dated: February 18, 2003

DELIB:2389764.1\022765-00160

[31] Generally, this Court does not consider moot issues or cases, East Grand Rapids, supra, citing LaBello v Victory Pattern Shop, Inc, 351 Mich 598; 88 NW2d 288 (1958), unless the issue is "one of public significance that is likely to recur, yet evade judicial review." Federated Publications, Inc v City of Lansing, 467 Mich. 98, 112; 649 NW2d 383 (2002), citing Amway v Grand Rapids R Co, 211 Mich 592, 610; 179 NW 350 (1920) and In re Midland Publishing, 420 Mich 148, 152, n 2; 362 NW2d 580 (1984). That standard is not met here.